A.F.R.

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HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
CIVIL REVISION NO. 186 of 2003

Petitioner
Non-applicant

Hirand Kodwani,
aged about 50 years,
S/o Kanhaiyalal Kodwani,
Gurunanak Radio &
Electrical Stores, M.G. Road
Raipur (CG).

Versus

Respondent
Applicant

Smt. Sushila Jadhav
Widow of Manohar Rao Jadhav,
R/o Station Road, Raipur;
Died during pendency of this revision, her legal representatives brought on record are -

i) Kishore Jadhav,
S/o Manohar Lal Jadhav, aged about 50 years.

ii) Ashok Jadhav, S/o Manohar Lal Jadhav, aged about 52 years.

iii) Smt Pushpa Jadhav, W/o. Late Arun Jadhav, aged about 40 years.

iv) Smt Sabha Jadhav, W/o Late Delip Jadhav, aged about 39 years.

v) Bela Shinde (daughter), W/o Arvind Shinde, aged about 40 years.

vi) Ku Asha Jadhav, D/o Manohar Lal Jadhav, aged about 44 years.

All residents of Station Road, Raipur (Chhattisgarh).

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PRESENT:

Mr. Ashish Shrivastava, counsel for the Petitioner.
Ms. Madhu Modi, counsel for the legal representatives of the respondent.

ORDER

(Dated 3rd January 2006)

This is a revision under Section 23-E of the Chhattisgarh Accommodation Control Act, 1961 (for short "the Act") directed against the order dated 21.02.2003 passed by the Rent Controlling Authority (for short "Authority"), Raipur in case No. 5/90 (8) 97-98 whereby the petition filed by respondent/applicant under Section 23 - A of the Act for recovery of possession of the suit accommodation has been allowed.

2) Respondent/Applicant claiming herself to be the landlord in accordance with Section 23-J of the Act, filed an application under Section 23 -A of the Act for an order directing the tenant/petitioner to put her in possession of the suit accommodation on the averment that the tenant failed to pay monthly rent from 18/06/1997 to 16/08/1997 and the suit accommodation is required bona fide by her for the business of her unmarried daughter Ku. Asha Jadhav. Tenant/Petitioner denied all the allegations leveled against him and also specifically denied the bona-fide requirement of suit accommodation by landlord/respondent for the purpose of tailoring shop of her daughter Ku. Asha Jadhav on the ground that she is already running a tailoring shop in the name of "Vandana Knitting Centre" situated in a building namely Matri Chhaya.

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3) Both the parties in support of their case adduced evidence. Learned authority after appreciating the evidence on record held that relationship of landlord and tenant exists between the parties. The applicant being a widow is landlord within the definition of Section 23-J of the Act. She bona-fide requires the non-residential suit accommodation for the business of her adult un-married daughter. Learned Authority further held that landlord/respondent has no other suitable accommodation except the suit accommodation for the business of her daughter. Learned authority also held that the rent of the suit accommodation was Rs. 1400/- (Rupees One thousand four hundred) per month and tenant/petitioner is liable to pay the arrears. Learned authority directed the tenant/petitioner to pay the arrears and to vacate the suit accommodation within two months.

4) Heard learned counsel for both the parties.

5) Learned counsel for the petitioner contended that the authority has no jurisdiction to decide the arrears of rent and to pass an eviction order on the ground of arrears of rent. Per contra, learned counsel for the tenant/respondent argued that learned authority has jurisdiction to decide the rate of rent as well arrears, and has also power to pass order of eviction on the ground of arrears of rent.

6) From bare reading of Section 23-A of the Act, it is crystal clear that the Authority has power to order to put landlord in possession of the accommodation on fulfillment of the condition prescribed therein, therefore, in the instant case, if it is found that landlord/owner of the suit accommodation bona-fide requires it for continuing the business of her unmarried daughter and no other reasonable suitable non-residential accommodation of her is in her occupation in that case only the Authority has power to pass an order

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of eviction. Learned Authority has no power to pass an eviction order on the ground of breach in payment of arrears of rent.

7) Section 23-H of the Act reads as below :-

> *"23-H. Deposit of rent pending proceedings for eviction or for revision—The provisions of section 13 shall apply "mutatis mutandis" in respect of an application for recovery of possession of accommodation under Section 23-A and in respect of proceeding for revision under Section 23-E against final order by the Rent Controlling Authority under Section 23-C or under Section 23-D as they apply to a suit or proceeding instituted on any of the grounds referred to in Section 12 :*
>
> *Provided that no suit or proceeding for eviction of the tenant is pending before any Court at any of its stages in relation to the same accommodation"*

8) From the aforesaid provision, it is clear that the provision of Section 13 of the Act has been made applicable in proceedings instituted under Section 23-A of the Act. Therefore, learned Rent Controlling Authority can determine rate of the rent and also the arrears payable to the landlord.

9) Learned counsel for the petitioner relying on the judgment rendered by Hon'ble the Apex Court in the case of ***Deena Nath Vs. Pooran Lal,' reported in (2001) 5 SCC 705*** contended that Section 12(1)(f) and 23-A of the Act are same for the purpose of determining bona fide requirement, therefore, in deciding application under Section 23-A of the Act same scale which is required for Section 12-(1) (f) is to be applied, and in the instant case landlord/applicant failed to prove her bona fide requirement. On the

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contrary, learned counsel for the landlord/applicant supported the impugned order.

10) Section 23-D(3) of the Act reads as below :-

> ***Sec. 23-D(3)*** *: "In respect of an application by a landlord it shall be presumed, unless the contrary is proved, the requirement by the landlord with reference to clause (a) or clause (b), as the case may be of Section 23-A is bona fide."*

11) From the above provision, it is clear that it is to be presumed that the requirement by landlord with reference to clause (a) or clause (b) of Section 23-A of the Act is bona fide unless the contrary is proved. It means burden has been shifted from landlord to tenant and tenant is required to prove contrary, whereas in Section 12(1)(f) of the Act, the burden does not shift but lie on the landlord to prove his bona fide requirement.

12) Here in the instant case, learned Rent Controlling Authority, after minutely appreciating the evidence, held that the daughter of landlord i.e. respondent Ku. Asha Jadhav is doing her business in their family residential accommodation. In night those rooms are used for living. Apart from that, no suitable approach to that place is available, therefore, held that the suit accommodation is required bona fide by the landlord/respondent for business of her daughter. Learned Authority also held that no suitable non-residential accommodation in possession of landlord/respondent is available in her possession for the business of her daughter.

13) Tenant Hiranand Kodwani, Witness No.1 in his cross-examination has admitted that he has seen the residential accommodation of landlord and his family which is Matrichhaya Mansion. From his cross examination, it is also apparent that, Vandana Knitting Centre is in this

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mansion. In his cross-examination, he further admitted that, no other shop is vacant. The Matrichhaya Mansion is occupied by Sushila Jadhav, Asha Jadhav and other family members. When tenant himself is admitting in his cross-examination that the Matrichhaya Mansion is residential accommodation, where Ku. Asha Jadhav is doing her business of knitting, it means she is in need of non-residential accommodation for her business and when the admission of tenant himself is that no other non-residential building is vacant, it means landlord has no other non-residential reasonable accommodation available in the city for the business of her daughter Ku. Asha Jadhav. Set apart from the evidence of landlord Smt. Sushila Jadhav and her daughter Ku. Asha Jadhav, it was also proved that in residential accommodation Ku. Asha Jadhav is continuing her knitting business and no other reasonable suitable vacant non-residential accommodation for her business is with Smt. Sushila Jadhav. Therefore, I am of the opinion that, learned Rent Controlling Authority, after minute appreciation of evidence, correctly held that landlord requires non-residential suit accommodation for business of her daughter bona fide and no other suitable non-residential accommodation for business of her daughter is in her possession.

14) Learned Rent Controlling Authority although vide impugned order directed to pay arrears of rent but for eviction has taken into consideration the ground that applicant/landlord requires the suit non-residential accommodation bona fide for business of her daughter and no other reasonable vacant accommodation is in her possession, therefore, the findings and order passed by the Rent Controlling Authority do not suffer from any infirmity which require to be interfered with by this Court in its revisional jurisdiction. The revision is liable to be dismissed and is accordingly dismissed.

15) Parties to bear their own costs.

Sd/-
V.K.Shrivastava
Judge